

**TITLE 14, CALIFORNIA CODE OF REGULATIONS**  
**SUBDIVISION 4. OFFICE OF SPILL PREVENTION AND RESPONSE**  
**CHAPTER 7. COMPLIANCE**  
**SUBCHAPTER 1. ADMINISTRATIVE COMPLIANCE ACTIONS**  
**AND HEARING PROCEDURES**  
**SECTIONS 873 - 874.6**  
*Effective 4-13-98*

**ARTICLE 1.**

**ADMINISTRATIVE COMPLIANCE ACTIONS AND CIVIL PENALTIES.**

**873. PURPOSE AND SCOPE.**

This subchapter establishes policies and procedures for the Administrator to take administrative compliance actions pursuant to Government Code Sections 8670.67, 8670.67.5 and 8670.68.

Authority: Sections 8670.68, and 11400.20 Government Code.

Reference: Sections 8670.67, 8670.67.5, 8670.68, and 11400.20, Government Code.

**873.1. DEFINITIONS.**

In addition to definitions found in Government Code Section 8670.3 and Chapter 1 of this subdivision, the following definitions govern the construction of this subchapter.

- (a) "Environment" means the total human surroundings, physical and biological, natural and artificial, and air, water, soil, plants, wildlife, and other ecological factors affecting the growth, development, and safety of people and other living organisms.
- (b) "Notice to Comply" means a written alternative to issuing a Complaint for Class 1 violation, which alleges a violation that does not assess a penalty.
- (c) "Respondent" means any person against whom a Notice to Comply or a Complaint is filed, pursuant to the provisions of this subchapter.
- (d) "Threat", for purposes of this subchapter, means an act or failure to act, the result of which could, by itself or in combination with other acts, endanger the public health and safety or harm the environment.
- (e) "Wildlife" means and includes all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.

Authority: Sections 8670.68 and 11400.20, Government Code.

Reference: Section 711.2, Fish and Game Code. Sections 8670.56.5, 8670.67 and 8670.68, Government Code.

## 873.2.GENERAL PROVISIONS.

- (a) The Administrator may take administrative compliance actions for violations of Chapter 7.4 of the Government Code (commencing with Section 8670.1) or Division 7.8 of the Public Resources Code (commencing with Section 8750) and any regulations, permits, or orders, issued or promulgated pursuant to those provisions.
- (b) Each calendar day or partial day that a violation occurs shall be considered a separate violation.
- (c) Twenty-five (25%) percent of any penalty collected under this subchapter shall be paid to the Office of Oil Spill Prevention and Response. The Administrator may allocate the amount collected among those state, county, or local agencies participating and assisting in the prosecution of the action in accordance with the relative personnel costs and other costs incurred.
- (d) Except as provided in Government Code Section 8670.67(c), administrative actions taken pursuant to this subchapter shall be separate and in addition to, and do not supersede or limit, any and all other administrative, civil or criminal actions or remedies.

Authority: Section 8670.68, Government Code.

Reference: Sections 8670.61, 8670.62, 8670.66, 8670.67, 8670.67.5, 8670.68, 8670.68.5, and 8670.69.4, Government Code.

## 873.3.CLASSIFICATION OF VIOLATIONS

- (a) Any violation of any provision of Chapter 7.4 of the Government Code (commencing with Section 8670.1) or Division 7.8 of the Public Resources Code (commencing with Section 8750) or any regulations, permits, or orders, issued or promulgated pursuant to those sections shall be assigned one of the following violation classifications:
  - (1) "Class 1 violation" means a violation that, singly or in combination with other acts, could not:
    - (A) cause an unauthorized discharge of oil; or
    - (B) substantially increase the risk of an unauthorized discharge of oil; or
    - (C) create a threat to public health and safety or the environment.
  - (2) "Class 2 violation" means a violation that in combination with other acts or over time, could reasonably or foreseeably cause, or increase the risk of an unauthorized discharge of oil or pose a threat to public health and safety or the environment.
  - (3) "Class 3 violation" means a violation that has resulted in an unauthorized discharge of oil or posed a substantial threat to public health and safety or the environment.
- (b) Cumulative Violations.
  - (1) If the respondent has committed three (3) Class 1 violations in any twelve-month period, or five (5) in any 24-month period, or seven (7) in any 36-month period, that series of violations may be considered a single Class 2 violation.

- (2) If the respondent has committed three (3) Class 2 violations in any twelve-month period, or five (5) in any 24-month period, or seven (7) in any 36-month period, that series of violations may be considered a single Class 3 violation.
  - (3) If the respondent has committed two (2) or more Class 2 violations at the same time which, taken together, could directly result in a discharge of oil or pose a threat to the public health and safety or the environment, then each violation shall be considered a separate Class 2 violation and the total combination of violations may be considered a Class 3 violation.
- (c) The administrative compliance actions taken for Class 1, Class 2 and Class 3 violations are as follows:
- (1) Class 1 violation: A Notice to Comply or an administrative civil penalty which shall not exceed \$10,000 for each violation.
  - (2) Class 2 violation: an administrative civil penalty which shall not exceed \$25,000 for each violation.
  - (3) Class 3 violation: an administrative civil penalty which shall not exceed \$100,000 for each violation.

Authority: Sections 8670.7, 8670.67 and 8670.68, Government Code.  
 Reference: Section 8670.67 and 8670.68, Government Code.

#### **873.4 NOTICE TO COMPLY.**

- (a) The Administrator may issue a Notice to Comply to any person as an alternative to a Complaint for a Class 1 violation, subject to subsection (b).
- (b) A Notice to Comply shall clearly state the facts or failures to act that constitute the alleged violation. Where appropriate, a Notice to Comply may require a time in which to comply and include a proposed means by which compliance may be achieved. The Administrator may require a person to provide proof of compliance.
- (c) Failure to comply with a Notice to Comply within the time allowed may be considered a violation of this subchapter.
- (d) If a person who receives a Notice to Comply disagrees with one or more of the alleged violations cited in the notice, the person shall provide written objection(s) to the Administrator within 10 business days from the date of the receipt of the Notice to Comply. The Administrator shall review the written objections within 90 days of their receipt. Results of this review may include, but are not limited to, rescinding the Notice to Comply, scheduling an informal settlement conference, or issuing a Complaint. If, upon review, the Administrator issues a Complaint and assesses an administrative civil penalty on the basis of the disputed violation, a hearing may be requested, and shall be conducted, in the manner set forth in Article 2 of this subchapter.
- (e) Notwithstanding subsection (a), the Administrator shall not issue a Notice to Comply for any knowing, willful, or intentional violations; for any violation that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or for any violation that is a chronic violation; or for any violation that is committed by a recalcitrant violator.
- (f) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of subsection (e), the Administrator shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard for the requirements of this subdivision.

(g) Pursuant to subsection (a), the respondent to a Notice to Comply shall:

- (1) sign the Notice to Comply and return it to the Administrator within 10 business days or acknowledge the Notice to Comply in a writing, which contains all the information in the Notice to Comply and return it to the Administrator within 10 business days,
- (2) within the time for compliance stated in the Notice to Comply, the recipient shall submit a statement to the Administrator detailing the steps by which compliance has been achieved. A false statement that compliance has been achieved is a violation of this subchapter pursuant to Sections 8670.65, 8670.66, or 8670.67 of the Government Code.

(h) Nothing in this subchapter shall be construed to restrict or limit the Administrator's ability to take any other action authorized by law.

Authority: Sections 8670.7, 8670.67 and 8670.68, Government Code.  
Reference: Section 8670.67 and 8670.68, Government Code.

### **873.5.ADMINISTRATIVE COMPLIANCE ACTIONS: GOVERNMENT CODE SECTION 8670.67.**

(a) The Administrator may issue a Complaint and assess a civil penalty upon any person who intentionally or negligently:

- (1) fails to follow the effective plan (as that term is defined in Title 14, California Code of Regulations Section 815.05), or the direction or orders of the Administrator, or the United States Coast Guard (USCG), in connection with an oil spill, except as provided in Government Code Section 8670.27.
- (2) fails to notify the USCG that a vessel (as defined in Government Code Section 8670.20(a)) is disabled within one hour of a disability if, while disabled, the vessel causes a discharge of oil into marine waters.
- (3) discharges or spills oil into, or which enters California marine waters unless the discharge is authorized by the United States, the State, or other agency with appropriate jurisdiction.
- (4) fails to immediately begin cleanup, abatement, or removal of spilled oil in the manner prescribed by Section 8670.25 of the Government Code.
- (5) fails to comply with the provisions of Chapter 7.4 of the Government Code (commencing with Section 8670.1) or Division 7.8 of the Public Resources Code (commencing with Section 8750) and any regulations, permits or orders issued or promulgated pursuant to those sections.

Authority: Sections 8670.7, 8670.67 and 8670.68, Government Code.  
Reference: Sections 8670.20, 8670.67 and 8670.68, Government Code.

**SECTION 873.6. ADMINISTRATIVE COMPLIANCE ACTIONS:  
PUBLIC RESOURCES CODE.**

- (a) Upon the request of the Executive Officer of the State Lands Commission (Executive Officer) the Administrator may issue an administrative civil Complaint and assess an administrative civil penalty upon any person who intentionally or negligently fails to comply with:
- (1) Marine Terminals Inspection and Management regulations found in Title 2 California Code of Regulations Sections 2300 et seq.;
  - (2) Marine Terminal Personnel Training and Certification regulations found in Title 2 California Code of Regulations Sections 2540 et seq.;
  - (3) any other provision of Division 7.8 of the Public Resources Code (commencing with Section 8750) and any other regulations, regulatory amendments, permits or orders issued or promulgated pursuant to these Public Resources Code sections.
- (b) The Administrator shall consult with the Executive Officer regarding costs, penalties, settlements, allocations, and other matters related to actions taken pursuant to subsection (a).

Authority: Sections 8670.7, 8670.67, Government Code.

Reference: Sections 8752-8760 (inclusive), Public Resources Code. Sections 8670.20, 8670.25, 8670.27, 8670.67, 8670.68 and 8670.69.4, Government Code.

**873.7.DISCHARGE OF OIL; ADMINISTRATIVE CIVIL LIABILITY; GOVERNMENT CODE  
SECTION 8670.67.5.**

In addition to any penalty assessed pursuant to Section 873.3 of this subchapter:

- (a) Without regard to intent or negligence, any person who causes or permits oil to be spilled or discharged shall be strictly liable for a civil penalty assessed for up to ten dollars (\$10.00) per gallon for every gallon of spilled or discharged oil.
- (b) Whenever the spill or discharge results from gross negligence or reckless misconduct, the Administrator shall assess a civil penalty at thirty dollars (\$30.00) per gallon of spilled or discharged oil.
- (c) Any civil penalty assessed pursuant to either subsection (a) or (b) shall be reduced for every gallon of spilled oil that is:
- (1) recovered; and
  - (2) properly reprocessed, reused, and/or disposed of in accordance with applicable laws.
- (d) The Administrator shall take into consideration the nature, circumstances, extent and gravity of the spill, including the spiller's efforts to prevent, abate or clean up a discharge, when determining the appropriate penalty amounts.
- (e) The determination of the amount of oil recovered shall be conducted pursuant to the provisions of Title 14 California Code of Regulations, Sections 877, et seq.

Authority: Sections 8670.7 and 8670.67.5, Government Code.

Reference: Section 8670.67.5, Government Code.

**873.8.DAMAGES.**

**RESERVED**

## **ARTICLE 2. HEARING PROCEDURES**

### **874. PURPOSE AND SCOPE.**

These procedural rules shall govern all hearings held pursuant to this subchapter.

Authority: Section 8670.68, Government Code.  
Reference: Section 8670.68, Government Code.

#### **874.1. COMPLAINT.**

The Administrator may issue a Complaint upon any person on whom administrative civil liability may be imposed pursuant to Section 8670.67 or 8670.67.5. The Complaint shall:

- (a) allege the facts or failures to act which constitute the basis for liability and contain the amount of the proposed civil penalty;
- (b) be served by personal service or certified mail;
- (c) inform the party so served of the right to a hearing;
- (d) include a reference to laws and regulations governing the administrative civil penalty adjudication process; and
- (e) include a document to serve as respondent's "Notice of Defense."

Authority: Section 8670.68, Government Code.  
Reference: Section 8670.68, Government Code.

#### **874.2. NOTICE OF DEFENSE; REQUEST FOR HEARING.**

- (a) Any person served with a Complaint may, within 10 business days after service, request a hearing by filing a Notice of Defense.
- (b) A Notice of Defense is deemed to be filed if it is postmarked within 10 business days after service.
- (c) A hearing requested by the respondent shall be conducted within 90 days after the Notice of Defense is received by the Administrator.
- (d) If a Notice of Defense has not been filed within 10 business days after service of the Complaint, the Administrator shall issue an order setting liability in the amount proposed in the Complaint, or if the Administrator and the party have entered into a settlement agreement, the Administrator shall issue an order setting liability in the amount specified in the settlement agreement.
- (e) If the party has not filed a Notice of Defense or if the Administrator and the party have entered into a settlement agreement, the Administrator's order shall:
  - (1) set the liability in the amount as specified in the Complaint or settlement; and
  - (2) shall not be subject to review by any court or agency.

Authority: Section 8670.68, Government Code.  
Reference: Sections 1013(a) and 2015.5, Code of Civil Procedure, and Section 8670.68, Government Code.

### **874.3. HEARING PROCEDURES.**

- (a) Any hearing required under this subchapter shall be conducted by an independent hearing officer according to the procedures specified in Government Code Sections 8670.68 and 11507 to 11517, inclusive, and those statutes incorporated by reference in Section 874.4 of this Article. Where conflicts occur among the above-referenced statutes, the provisions set forth in Government Code 8670.68 shall control.
- (b) The independent hearing officer shall take into consideration the nature, circumstances, extent and gravity of the violation, including those factors set forth below, when reviewing the proposed penalty.
  - (1) the degree of the respondent's negligent, grossly negligent, reckless, or intentional conduct;
  - (2) the actual or threatened harm to the public health and safety or the environment;
  - (3) the volume of oil discharged;
  - (4) the respondent's past and present efforts, including compliance history, to prevent, abate, or clean up a discharge or conditions posing a threat to the public health and safety, fish and wildlife, or the environment;
  - (5) the respondent's ability to pay the proposed civil penalty;
  - (6) prior actions brought against the respondent pursuant to this subchapter.

Authority: Section 8670.68, Government Code.  
Reference: Section 8670.68, Government Code.

### **874.4 INCORPORATION BY REFERENCE.**

- (a) Unless inconsistent or in conflict with the governing statutes or this subchapter, and to the extent that they govern administrative civil penalty adjudication procedures, the following statutes are incorporated by reference:
  - (1) Definitions: Government Code Sections 11405.10 through 11405.80.
  - (2) Governing Procedures: Government Code Sections 11415.10 through 11415.60.
  - (3) Alternative Dispute Resolution: Government Code Sections 11420.10 through 11420.30.
  - (4) Ex Parte Communications: Government Code Sections 11430.10 through 11430.80.
  - (5) Alternative Service of Documents (excluding Complaint): Government Code Section 11440.20.
  - (6) Hearings by Teleconference: Government Code Section 11440.30.
  - (7) Informal Hearing Procedures: Government Code Sections 11445.10 through 11445.60.
  - (8) Subpoenas: Government Code Sections 11450.05 through 11450.50.
  - (9) Enforcement and Sanctions: Government Code Sections 11455.10 through 11455.30.

Authority: Sections 8670.68 and 11400 20, Government Code.

Reference: Sections 8670.68, 11405.10 -11405.80, 11415.10-11415.60, 11420.10-11420.30, 11430.10-11430.80, 11440.20, 11440.30, 11445.10-11445.60, 11450.05-11450.50, and 11455.10-11455.30 Government Code.

#### **874.5. ORDER SETTING CIVIL PENALTY.**

- (a) After conducting any hearing required under this subchapter, the independent hearing officer shall issue a decision, including an order setting the amount of civil penalty to be imposed, within 30 days after the case is submitted.
- (b) Orders setting civil liability issued pursuant to this section shall become effective and final upon issuance, and payment shall be made within 30 days of issuance.
- (c) Copies of the orders shall be served by personal service or by certified mail upon the party served with the Complaint and upon other persons who appeared at the hearing and requested a copy.
- (d) Any order for administrative civil penalties entered pursuant to this section shall be subject to interest at the legal rate (as defined in Code of Civil Procedure Section 685.010) from the time of service of the Complaint.

Authority: Section 8670.68, Government Code.

Reference: Section 8670.68, Government Code.

#### **874. 6. REVIEW OF DECISION.**

- (a) Within 30 days after service of a copy of a decision issued by the independent hearing officer, a party to the action, or a person appearing at the hearing and served with a copy of the decision, may file a petition for writ of mandate for review of the decision with a court of appeal.
  - (1) The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to the Act or the accrual of any penalties assessed pursuant to the Act and does not prohibit the court from granting any appropriate relief within its jurisdiction.
  - (2) Any person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the independent hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies.
- (b) Except as otherwise provided in this article, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this section.
- (c) In all proceedings pursuant to this subchapter, the court shall uphold the decision of the independent hearing officer if the decision is based upon substantial evidence in the whole record.

Authority: Section 8670.68, Government Code.

Reference: Section 8670.68, Government Code, and Section 1094.5, Code of Civil Procedure.